*** THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY**

+ Company Application No.1746 of 2011
in
Company Petition No.189 of 2004

% 13-12-2011

M/s.Samvidha Chit Funds (P) Ltd. (in liquidation), rep. by the Official Liquidator, High Court of A.P., Hyderabad.

…Applicant

VS.

$ The learned Court of I Additional Junior Civil Judge, Courts Complex, Vijayawada.

..Respondent

! COUNSEL FOR APPLICANT: SRI M.ANIL KUMAR

^COUNSEL FOR RESPONDENT: --

< Gist:

> Head Note:

? CITATIONS:

(1993) 76 Comp. Cas 878

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDYw3

Company Application No.1746 of 2011
in
Company Petition No.189 of 2004

Date:13th December, 2011

Between:

M/s.Samvidha Chit Funds (P) Ltrd. (in liquidation),
Rep. by the Official Liquidator, High Court of A.P.,
Hyderabad.

…Applicant

A n d

The learned Court of I Additional Junior Civil Judge,
Courts Complex, Vijayawada.

….Respondent

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Company Application No.1746 of 2011
in
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ORDER:

Mr.G.Krishna Kumar and Smt.S.Aruna Kumari filed Company Petition No.189 of 2004 under Sections 433(e)(f) and 434(1)(c) of the Companies Act, 1956, (for short, 'the Act') seeking an order for winding up of M/s.Samvidha Chit Funds Private Limited. The said Company

Petition came to be allowed on 09.09.2005, and the Official Liquidator attached to this Court has been appointed as liquidator of the Company (in liquidation). In the process of recovery of debts due to the Company (in liquidation), the Official Liquidator filed C.A.No.519 of 2006 against Sri Ravuri Udaya Bhaskar; C.A.No.523 of 2006 against Smt.Vangala Vijaya Kumari & 3 others; and C.A.No.1171 of 2006 against Smt.Koneti Indira & others for recovery of Rs.55,000/-; Rs.54,000/- and Rs.45,000/- respectively. The said applications came to be allowed on 31.07.2006, 31.07.2006 and 09.11.2006 respectively. Despite the Company Applications being allowed granting a decree against the above referred persons, they did not choose to satisfy the decretal amount. Hence, the Official Liquidator initiated execution proceedings before I Additional Junior Civil Judge, at Vijayawada. The learned Additional Junior Civil Judge, returned the execution petitions on the ground of maintainability. Hence, this Company Application by the Official Liquidator representing M/s.Samvidha Chit Funds Private Limited (in liquidation) seeking a direction to I Additional Junior Civil Judge, Vijayawada, to entertain the execution petitions.

2. Heard Sri M.Anil Kumar, learned counsel appearing for the applicant Company and perused the material brought on record.

3. Learned counsel appearing for the applicant contends that the provisions of Sections 634 and 645 of the Act provide for enforcement of the order made by the company Court in the same manner as a decree made by the court in a suit pending therein. A further submission has been made that for execution of the decree passed by the Company Court, a certified copy of the order sought to be executed is required to be produced before the executing Court and there is no need of getting the decree transferred in accordance with the procedure laid down in Section 39 of the Code of Civil Procedure.

4. The short point, which arises in this application is, whether in the facts and circumstances of the case, the Official Liquidator should file a transfer application or execution petition?

5. Few provisions of the Act are required to be noted before dealing with the point involved in this application. Under Section 482 of the Act, any order made by a Court for, or in the course of, winding up a company shall be enforceable at any place in India, other than that over which such Court has jurisdiction, by the Court which would have had jurisdiction in respect of the company if its registered office had been situate at such other place, and in the same manner in all respects as if the order had been made by that Court. This section provides for the mode of enforcing orders in winding up in any place in India, outside the jurisdiction of the Court, which passed them. Any such order made by one Court, may be enforced in any place in India by any other Court which would have had jurisdiction in respect of the company, if its registered office were situated within that other Court's jurisdiction. Under Section 634 of the Act, any order made by the company Court under the Act may be enforced in the same manner as a decree made by the Court in a suit pending therein.

6. Sections 482, 634 and 635 of the Act relate to enforcement of the orders of the company Court. Section 635 of the Act reads as hereunder:

> "635. *Enforcement of orders of one court by other courts*.- (1) Where any order made by one court is required to be enforced by another court, a certified copy of the order shall be produced to the proper officer of the court required to enforce the order.
>
> (2) The production of such certified copy shall be sufficient evidence of the order.
>
> (3) Upon the production of such certified copy, the court shall take the requisite steps for enforcing the order, in the same manner as if it has been made by itself.
>
> (4) Where any order made by the Company Law Board is required to be enforced by a court, a certified copy of the order shall be produced to the proper officer of the court required to enforce the order and the provisions of sub-section (2) and (3) shall, as far as may be, apply to every such order in the same manner and to the same extent as they apply to an order made by a court."

The procedure to be followed in the matter of execution of the order made by the company court is different from that laid down in the Code of Civil Procedure. As per Section 635 of the Act, it is sufficient to produce to the Court which is required to execute its order, a certified copy of the order sought to be executed. It is not necessary to comply with the procedure laid down in Section 39 and Order 21, Rules 4 and 5 of the Code of Civil Procedure and get the order first transferred by the court which made it to the court which is to enforce it and then make an application to execute it. Similar view on this aspect has been taken by the Karnataka High Court in ***Sindhu Chits & Trading (P) Ltd. v. Khayirunnissa & Anr.***[1], wherein it has been held as hereunder:

> "The provision of Section 635 makes it clear that it is sufficient to produce to the court, which is required to execute its order, a certified copy of the order sought to be executed. The procedure to be followed in the matter of executio0n of the order made by the company court is different from that laid down in the Code of Civil Procedure. The orders of the company court are not decrees in the strict sense of the word. But it may be enforced in the same manner as a decree. It means, that though an order passed by the company court does not amount to a decree for the purpose of execution, it will be treated as though it is a decree and all the provisions of the Code of Civil Procedure relating to the execution of the decree would then apply. Since the procedure to be followed in the matter of execution of the order of the company court is different from that laid down in the Civil Procedure Code, it is not necessary to comply with the procedure laid down in section 39 of the Civil Procedure Code, and Order 21, Rules 4 and 5 of the Civil Procedure Code and get the order first transferred by the court which made it to the court which is to enforce it and then make an application to execute it. Where the order made by the company court is required to be enforced by another court, a mere production of a certified copy of the order is sufficient without getting the order transferred by the court which is required to enforce the order by taking necessary steps in the same manner as if it has been made by itself."

7. What is contemplated for execution of the order passed by this Court is a certified copy shall be produced to the proper officer of the Court, which required to enforce the order and the production of such certified copy shall be sufficient evidence for order. Upon production

of such certified copy, the executing Court shall take the required steps for enforcing the order as if it has been made by itself.

8. In view of the provisions of Sections 482, 634 and 635 of the Act, the objection raised by I Additional Junior Civil Judge, Vijayawada, with regard to maintainability of the execution petitions basing on the orders passed by this Court in Company Application Nos.519, 523 and 1171 of 2006, cannot be sustained.

9. Accordingly, the Company Application is ordered directing the learned I Additional Junior Civil Judge, Vijayawada, to entertain the execution petitions for realization of the decretal amount in Company Application Nos.519, 523 and 1171 of 2006 and proceed with the execution petitions in accordance with the provisions of law. No costs.

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B.SESHASAYANA REDDY, J

Date:13th December, 2011.

Note:
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[1] (1993) 76 Comp. Cas 878